THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10759 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT ADANI ENERGY LTD. - Petitioner
Versus
AHMEDABAD MUNICIPAL CORPN. & 1 - Respondents

==========

Appearance :
MR PR NANAVATI for Petitioner.
NOTICE SERVED BY DS for Respondents : 1 - 2.
MR RM CHHAYA for Respondent No.1.

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 11/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Rule. Mr.R.M.Chhaya, learned counsel, waives service of notice on behalf of the respondent No.1. The record indicates that though the respondent No.2 i.e. Torrent Power AEC Limited is duly served with notice, it has neither appeared through its Lawyer, nor through its constituted agent, nor has filed reply controverting the averments made in the petition. Under the circumstances, this Court is of the opinion that it is not necessary for the petitioner to effect service of notice of rule upon the respondent No.2. Having regard to the facts of the case, the petition is taken up for final disposal today.

2. By filing this petition under Article 226 of the Constitution, the petitioner i.e. Gujarat Adani Energy Ltd., has prayed to issue an appropriate writ or order, directing the respondent No.2 i.e. Torrent Power AEC Ltd to provide electricity supply to the Gas Station of the petitioner constructed on Final Plot No.70 of

Moje Village Memnagar, District, Sub-District: Ahmedabad, T.P.Scheme No.31, known as Memnagar Depot CNG Station. The petitioner has further prayed to direct the respondent No.1 i.e. Ahmedabad Municipal Corporation to process the application for Building Use Permission in respect of CNG Gas Station situated at Memnagar Depot, in accordance with law.

3. The petitioner is a Company incorporated under the provisions of the Companies Act, 1956. It is mainly engaged in the business of manufacture, supply, transportation and distribution of all forms of conventional and/or non-conventional types of energy, including gaseous fuel. It is claimed by the petitioner that as a part of its object, the Company has been setting up certain CNG Gas Terminals/Stations in City of Ahmedabad. Final Plot No.70/Part of T.P.Scheme No.31, University belongs to the respondent No.1 i.e. Ahmedabad Municipal Corporation. The Ahmedabad Municipal

Transport Service has executed a lease of the said Plot in favour of the petitioner to enable the petitioner to set up CNG Gas Terminal/Station. It may be mentioned that one of the clauses of the Lease-Deed mentions, inter alia, that the petitioner shall supply CNG gas to the Ahmedabad Municipal Transport Service on preference basis. After execution of the lease-deed, the Ahmedabad Municipal Transport Service applied to the Ahmedabad Municipal Corporation to permit it to develop the land in question. The said application was granted by the Ahmedabad Municipal Corporation. This is quite evident from the Commencement Letter (Rajachitthi) dated August 8, 2006, which is produced by the learned counsel for the petitioner along with the approved plans before the Court, for perusal of the Court. The Commencement Letter (Rajachitthi) dated August 8, 2006 with approved plans is ordered to be taken on the record of the case. On the basis of the Commencement Letter dated August 8, 2006 and approved plans, the petitioner has

established CNG Gas Station at Memnagar Depot of Ahmedabad Municipal Transport Service situated at village Memnagar, Ahmedabad City on Final Plot No.70 of T.P.Scheme No.31- University. After construction of CNG Gas Station was over, it was obligatory for the petitioner to obtain Building Use Permission from the respondent No.1, and thereafter to apply to the respondent No.2 for supply of electricity connection to CNG Gas Station constructed by it. However, without obtaining Building Use Permission, the petitioner applied to the respondent No.2 for supply of electricity connection to CNG Gas Terminal constructed by it. The petitioner has claimed in the petition that the petitioner was orally informed by the respondent No.2 that the respondent No.2 was not in a position to give power supply in view of order passed by the High Court on July 25, 2000 in Special Civil Application No.4578 of 1997. It is also claimed by the petitioner that the petitioner was asked by the respondent No.2 to get necessary

clarification from the High Court to enable the respondent no.2 to supply electricity connection to the CNG Gas Station constructed by the petitioner. Under the circumstances, the petitioner has filed the instant petition and claimed reliefs to which reference is made earlier.

4. The petition was moved during Summer Vacation and placed for admission hearing before the learned Single Judge, who after hearing the learned counsel for the petitioner, ordered notice to be issued to the respondents. As observed earlier, though the respondent No.2 is duly served, it has neither appeared before the Court, nor contested the petition.

5. This Court has heard Mr.P.R.Nanavaty, learned counsel for the petitioner, and Mr.R.M.Chhaya, learned counsel for the respondent No.1. This Court has also considered the documents forming part of the petition. Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if following

directions are issued:

(1) The petitioner will approach the Ahmedabad Municipal Corporation for obtaining Building Use Permission within thirty days from today with a proper application/form/format and by paying requisite fee, if any.

(2) The Ahmedabad Municipal Corporation is directed to take decision on the application, which may be submitted by the petitioner, within four months from the date of receipt of the same.

(3) The petitioner shall apply to the respondent No.2., i.e. Torrent Power AEC Limited, for providing electricity connection to CNG Gas Station constructed by it with a proper application/form/format and by paying charges within a week.

(4) The respondent No.2, i.e. Torrent Power AEC Limited, is directed to provide electricity connection to CNG Gas Station constructed by

the petitioner within one month on usual terms and conditions.

(5) In case the Ahmedabad Municipal Corporation is not approached by the petitioner for obtaining Building Use Permission within the period stipulated in this order, the Ahmedabad Municipal Corporation shall inform the Torrent Power AEC Limited to disconnect the electricity supply made available to CNG Gas Station constructed by the petitioner and in such an eventuality, it would be open to the Torrent Power AEC Limited to disconnect the electricity supply provided to the CNG Gas Station constructed by the petitioner within a period of fifteen days.

(6) In case the Ahmedabad Municipal Corporation does not grant Building Use Permission, it will ask the Torrent Power AEC Limited to disconnect the electricity supply provided to CNG Gas Station constructed by the petitioner within a period of fifteen days and, thereupon, it would be open to the

Torrent Power AEC Limited to disconnect the electricity supply provided to CNG Gas Station constructed by the petitioner.

(7) The petitioner shall file an Undertaking before the Torrent Power AEC Limited to the effect that in the event the Building Use Permission is not granted by the Ahmedabad Municipal Corporation, the petitioner will have no objection to disconnection of electricity supply provided to CNG Gas Station constructed by it. This Undertaking shall be filed along with the application/form/format meant for the purpose.

(8) Apart from the above conditions, the petitioner will also comply with Regulation 20 of General Development Control Regulations (Part-III) of Ahmedabad Urban Development Authority.

Rule is made absolute subject to abovereferredto directions. There shall be no order as to costs. Direct Service is permitted.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(patel)